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7 HERMAN TAMRAT,  
8 Plaintiff,  
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10 v.  
11 SONOMA COUNTY MAIN ADULT  
12 DETENTION FACILITY  
13 ADMINISTRATION, et al.,  
14 Defendants.  
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Case No. 21-cv-00127-PJH

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**ORDER OF DISMISSAL WITH LEAVE  
TO AMEND**

25 Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. §  
26 1983. He has been granted leave to proceed in forma pauperis.

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**DISCUSSION**

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**STANDARD OF REVIEW**

31 Federal courts must engage in a preliminary screening of cases in which prisoners  
32 seek redress from a governmental entity or officer or employee of a governmental entity.  
33 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and  
34 dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief  
35 may be granted, or seek monetary relief from a defendant who is immune from such  
36 relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v.*  
37 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

38 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement  
39 of the claim showing that the pleader is entitled to relief." "Specific facts are not  
40 necessary; the statement need only "give the defendant fair notice of what the . . . claim  
41 is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007)

1 (citations omitted). Although in order to state a claim a complaint "does not need detailed  
2 factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment]  
3 to relief' requires more than labels and conclusions, and a formulaic recitation of the  
4 elements of a cause of action will not do. . . . Factual allegations must be enough to  
5 raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550  
6 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer "enough facts to state  
7 a claim to relief that is plausible on its face." *Id.* at 570. The United States Supreme  
8 Court has recently explained the "plausible on its face" standard of *Twombly*: "While legal  
9 conclusions can provide the framework of a complaint, they must be supported by factual  
10 allegations. When there are well-pleaded factual allegations, a court should assume their  
11 veracity and then determine whether they plausibly give rise to an entitlement to relief."  
12 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

13 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
14 elements: (1) that a right secured by the Constitution or laws of the United States was  
15 violated, and (2) that the alleged deprivation was committed by a person acting under the  
16 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

17 **LEGAL CLAIMS**

18 Plaintiff alleges that his due process rights were violated when he was placed in  
19 disciplinary isolation at the county jail.<sup>1</sup>

20 A court presented with a procedural due process claim by a pretrial detainee  
21 should first ask if the alleged deprivation amounts to punishment and therefore implicates  
22 the Due Process Clause itself; if so, the court then must determine what process is due.  
23 See, e.g., *Bell v. Wolfish*, 441 U.S. 520, 537-38 (1979) (discussing tests traditionally  
24 applied to determine whether governmental acts are punitive in nature). Disciplinary  
25 segregation as punishment for violation of jail rules and regulations, for example, cannot  
26 be imposed without due process, i.e., without complying with the procedural requirements  
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<sup>1</sup> It appears that plaintiff was a pretrial detainee during the relevant time.

1 of *Wolff v. McDonnell*, 418 U.S. 539 (1974). See *Mitchell v. Dupnik*, 75 F.3d 517, 523-26  
2 (9th Cir. 1996).

3 If the alleged deprivation does not amount to punishment, a pretrial detainee's due  
4 process claim is not analyzed under *Sandin v. Conner*, 515 U.S. 474 (1995), which  
5 applies to convicted prisoners, but rather under the law as it was before *Sandin*. See  
6 *Valdez v. Rosenbaum*, 302 F.3d 1039, 1041 n.3 (9th Cir. 2002). The proper test to  
7 determine whether detainees have a liberty interest is that set out in *Hewitt v. Helms*, 459  
8 U.S. 460, 472 (1983), and *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454,  
9 461 (1989). Under those cases, a state statute or regulation creates a procedurally  
10 protected liberty interest if it sets forth "substantive predicates" to govern official decision  
11 making" and also contains "explicitly mandatory language," i.e., a specific directive to the  
12 decisionmaker that mandates a particular outcome if the substantive predicates have  
13 been met. *Thompson*, 490 U.S. at 462-63 (quoting *Hewitt*, 459 U.S. at 472).

14 If the alleged deprivation does not amount to punishment and there is no state  
15 statute or regulation from which the interest could arise, no procedural due process claim  
16 is stated, and the claim should be dismissed. See *Meachum v. Fano*, 427 U.S. 215, 223-  
17 27 (1976) (interests protected by due process arise from Due Process Clause itself or  
18 from laws of the states).

19 Plaintiff states that as a result of a Rules Violation he was placed in disciplinary  
20 isolation for 15 days and lost privileges. Plaintiff states that he was denied an  
21 investigatory employee, the right to cross-examine his accusers and prior written notice  
22 of the charges. The complaint is dismissed with leave to amend to provide more  
23 information. Plaintiff must present more information regarding why he was disciplined  
24 and specially describe the punishment and resulting loss of privileges to demonstrate that  
25 his due process rights were implicated.

## 26 CONCLUSION

27 1. The complaint is **DISMISSED** with leave to amend in accordance with the  
28 standards set forth above. The amended complaint must be filed no later than **May 20**,

1 **2021**, and must include the caption and civil case number used in this order and the  
2 words AMENDED COMPLAINT on the first page. Because an amended complaint  
3 completely replaces the original complaint, plaintiff must include in it all the claims he  
4 wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may  
5 not incorporate material from the original complaint by reference. Failure to file an  
6 amended complaint may result in the dismissal of this action.

7        2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the  
8 court informed of any change of address by filing a separate paper with the clerk headed  
9 "Notice of Change of Address," and must comply with the court's orders in a timely  
10 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute  
11 pursuant to Federal Rule of Civil Procedure 41(b).

## IT IS SO ORDERED.

Dated: April 20, 2021

/s/ Phyllis J. Hamilton  
PHYLLIS J. HAMILTON  
United States District Judge